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UNITED STATES DISTRICT COURT .
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS PENSION FUND, et al.,

Plaintiffs,

-against-

MICHAEL FORDE, et al.,

Defendants.

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**OBJECTIONS TO REPORT
AND RECOMMENDATION**

11 Civ. 5474 (LAP)(GWG)
(Lead Case)

Defendant, MICHAEL FORDE (“Forde”), by his attorneys, LOMBARDI & SALERNO PLLC, hereby submits his objections to the Report and Recommendation, dated June 1, 2018, of the Hon. Gabriel W. Gorenstein, U.S.M.J., pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, as follows:

1. Forde objects to that portion of the Report and Recommendation which states “Forde never filed an opposition to the Funds’ summary judgment motion or his own motion.” (Rep. and Rec., p. 11). It is respectfully submitted that Forde joined in the opposition to the Funds’ summary judgment motion and the affirmative summary judgment motion submitted by co-counsel, Victoria Quesada, Esq., on behalf of co-defendant John Greaney (“Greaney”). As Magistrate Judge Gorenstein observed, those submissions indicated that they were being submitted ““in favor of John Greaney *and Michael Forde*. See Def. Not. Mot. at 1-2.”” (Rep. and Rec., p. 11). As counsel for Forde, we beg the Court’s indulgence for failing, as Magistrate

Judge Gorenstein correctly observes, to have filed some further submission or had some further communication with the Court indicating that we were joining in the submissions of Greaney. (Rep. and Rec., p. 11). It was my recollection until reading the Report and Recommendation that we had done so only to discover that we had not. Magistrate Judge Gorenstein refers to a letter I submitted on behalf of Forde and Greaney, dated September 28, 2017 (Docket # 247), requesting an extension of time to file defense cross-motions. (Rep. and Rec., p. 11). In that letter, I indicated that I was experiencing some serious personal and familial issues at that time. Unfortunately, those matters persisted and the distractions caused me to neglect making some additional indication to the Court of joining in the Greaney submissions.

2. It is respectfully submitted that due to the joint and several liability of Forde and Greaney, as a matter of law, for any and all damages determined to have been sustained by the plaintiffs in this matter, the Report and Recommendation, as well as any and all objections thereto submitted by co-counsel for Greaney¹, and the ultimate disposition of same by this Court, should apply equally to both defendants. As Magistrate Judge Gorenstein states, “The Restitution Order issued against Greaney notes that ‘Greaney shall be jointly and severally liable for the losses set forth above . . . with co-defendant Michael Forde’” (Rep. and Rec., p. 8). He further observes that “[Forde} will be jointly and severally liable for the losses with Greaney.” (Rep. and Rec., p. 8). Magistrate Judge Gorenstein goes on to state, “Nonetheless, as is discussed below, many of the issues applicable to Greaney apply equally to Forde.” (Rep. and Rec., p. 11); and, “[i]n any event, Forde and Greaney are precluded from relitigating their liability both by statute and under principles of issue preclusion

¹ Forde does hereby expressly join in such objections to the Report and Recommendation as will be submitted on behalf of Greaney.

[citations omitted].” He further states, “[n]onetheless, to determine the scope of the defendants’ liability, we will examine the application of these principles to the claims against *Forde* and Greaney.” (Rep. And Rec., p. 19).

3. Accordingly, it is respectfully submitted that Magistrate Judge Gorenstein’s Report and Recommendation is inclusive of the analysis of the competing claims and defenses as they apply to both Forde and Greaney, and that the rulings and conclusions he reached *did* apply, and should apply, to Forde as well as Greaney. (See Rep. And Rec., p. 56-57).

Dated: New York, New York
June 14, 2018

LOMBARDI & SALERNO PLLC

_____ By:

A handwritten signature in black ink, appearing to read "Dino J. Lombardi", with a stylized flourish at the end.

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